

**North Carolina Commission for Mental Health, Developmental Disabilities
and Substance Abuse Services**

Rules Committee Minutes

DoubleTree Hotel
1707 Hillsborough Street
Raleigh, NC

Thursday, April 24, 2014

Commission Members Attending:

Anna Cunningham, Roger Dillard, Melissa Gott, Michael Grannis, Michael Maybee, Brian Sheitman, Marian Spencer, Peggy Terhune, Don Trobaugh, Carol Vale, Ann Shaw, Stephanie Tyson

Excused Absences:

James Finch, Kevin Oliver, Pamela Poteat, David Turpin

Division Staff:

W. Denise Baker, Marta T. Hester, Lauren Scott

Call to Order and Chairman's Report:

Dr. Greg Olley, Chairman, NC Commission for Mental Health, Developmental Disabilities and Substance Abuse Services (Commission), called the Rules Committee meeting to order at 1:08 pm. Dr. Olley chaired the meeting due to the excused absence of Kevin Oliver, Rules Committee chairman. Dr. Olley announced the excused absences, paused for a moment of reflection, and read the ethics reminder. He also thanked Mr. Oliver, Peggy Terhune, Commission member, and W. Denise Baker, Division Affairs Team Leader, Operations Support Section, NC Division of Mental Health, Developmental Disabilities and Substance Abuse Services (NC DMH/DD/SAS), for their help with the numerous tasks associated with the rules review process required by G.S. §150B-21.3A.

As part of the Chairman's Report, Dr. Olley advised Ms. Baker is seeking feedback from other state government agencies that have already starting working on the rules review process. He mentioned the subcommittee's task involves reviewing the rules by placing them in one of three categories and highlighting the ones to be further examined by the Commission at a later date. He added Ms. Baker will provide each three-person group with a revised listing of the rules for review. He emphasized the importance of reviewing the rules during the interim between meetings via conference call and informed the Committee that subject matter experts will be available to offer assistance. It was also announced that Steven Hairston, Operations Support Section Chief, NC DMH/DD/SAS, was leaving his position and a small reception would be held in his honor in the Albemarle Building next Wednesday afternoon. Dr. Olley also suggested a thank you letter be sent to Mr. Hairston on the Commission's behalf.

Approval of Minutes:

Michael Maybee, Committee member, requested a change to the minutes on page 11 of the meeting packet in the 4th bullet from the bottom of the page.

- F. Michael Maybee stated that on March 7th there will be a presentation to the legislature about the future of Medicaid *reform in light of the consolidation of MCOs*.

Upon motion, second and unanimous vote, the Rules Committee approved the minutes of the meeting of January 23, 2014, as amended.

North Carolina General Statute 150B-21.3A, Periodic Review of Existing Rules:

Ms. Baker disseminated copies of the handout for reference and discussion: *Periodic Review and Termination of Existing Rules – Initial Determination Report – Subchapters 26A & 26B*. In response to Dr. Olley's question, she advised the category on the Basis of Determination on the handout is for use by the Rules Committee subcommittees only and will not be included in the final report. Other handouts included: NCGS §150B-21.3A, *Periodic Review and Termination of Existing Rules*, 10A NCAC Subchapter 26A, *Rules of Procedure* and 10A NCAC Subchapter 26B, *Confidentiality Rules*. Ms. Baker provided an overview of the revised schedule and advised that 10A NCAC Subchapter 26A, *Rules of Procedure* and 10A NCAC Subchapter 26B, *Confidentiality Rules* were the first two set of rules to be reviewed in preparation for a final vote/report by the Commission. Following the Commission's adoption of its Initial Determination Report, the Report will be published for a 60 day comment period. Rules will be divided by subchapter and sections for the Rules Committee to review. Each subcommittee should have a reporter to submit its report/information to Ms. Baker. She also discussed the role of the DMH/DD/SAS subject matter experts in the process.

Dr. Terhune expressed concerns that the applicable laws may need to be reviewed to determine if the rules are necessary. Dr. Olley advised the subject matter experts can help identify what is in statute, and the Advisory arm of the Commission can examine what is out-of-date. Ms. Baker advised the Commission has the authority to amend all the rules that they are examining and thoroughly explained the rule making and review process. She explained the Commission's report on the determination of the rules (based upon recommendations by the Rules Committee) will be posted on the Commission and Office of Administrative Hearings Web sites for a 60 day public comment period. After the public comment period ends, each rulemaking body (Commission) will respond and review comments in the comment grid column on the Commission's report. Next, the Commission will send the entire report containing any comments received and the Commission's responses to each, to the Rules Review Commission (RRC). The RRC will ensure the Commission has addressed all comments that have merit. The RRC has the ability to change the Commission's categorization of a rule; the RRC will submit its final report to the NC General Assembly.

Ms. Baker received the following comments and questions from the Rules Committee members:

- Anna Cunningham asked how the public knew where rules are posted, generally speaking. Ms. Baker advised that each rulemaking agency is required to maintain an "interested persons" list consisting of individuals who have expressed interest in being notified of the agency's rulemaking activity. She added that all rules in the public comment period are posted on the Office of Administrative Hearings (OAH) Web site as well as that of the issuing agency.
- Dr. Marian Spencer asked if there is a process regarding how to find out if previous comments were made on the rules the Commission is categorizing now. According to Ms. Baker, there have not been comments from the public on the rules generally speaking; the only exception to that relates to the rules that have been acted on (i.e., adopted, amended, repealed) by the Commission and posted for public comment pursuant to rulemaking actions.
- In response to questions and comments from Mr. Michael Maybee and Ms. Melissa Gott, Ms. Baker clarified the review of rules applies to all rules written pursuant to the rulemaking body's authority with an exception having been granted for rules adopted or amended within the 10 year period preceding this review. In other words, rules that have been adopted or amended within the past 10 years will not have to be reviewed during this process.
- Mr. Maybee also questioned the solicitation process for comments on the rules. Ms. Baker responded that the DMH/DD/SAS maintains a list of interested parties and notifies that group of any rulemaking activity undertaken by the Commission. In addition, attempts are made to notify specific groups affected by the rule in question. For example, LME-MCOs were notified of the proposed changes to the forensic evaluator rules, as the rules required that the forensic evaluators be employees

or contractors of the LME-MCO and that the LME-MCOs provide oversight of the forensic evaluator process.

Subcommittee Workgroup Meetings:

The subcommittees met in their assigned groups to review Subchapters 26A and 26B.

Ms. Baker advised she will compile the subcommittee reports into a single document for review by the Rules Committee.

Public Comment:

There were no public comments.

Adjournment:

There being no further business, the meeting adjourned.